UNITED
NATIONS

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General Assembly
Security Council

Distr.
GENERAL

A/49/864
S/1995/201
15 March 1995
ENGLISH
ORIGINAL: SPANISH

GENERAL ASSEMBLY
Forty-ninth session
Agenda item 74
PROTECTION AND SECURITY OF
SMALL STATES

SECURITY COUNCIL
Fiftieth year

Letter dated 15 March 1995 from the Permanent Representative of Peru to the United Nations addressed to the Secretary-General

I have taken note of the various letters sent to you by the Under-Secretary for International Organizations of the Ministry of Foreign Affairs of Ecuador and that country's Permanent Representative in connection with the regrettable armed incident that occurred in the area of the headwaters of the Cenepa river, the same letters which, at the request of Ecuador, have been distributed under agenda item 74 of the forty-ninth session of the General Assembly.

Without referring to the relevance of the agenda item under which these letters have been distributed, I wish to state that, in my opinion, the best way for the international community and, in particular, each State to ensure their security and protection is to act with full respect for international law, especially agreements with neighbouring countries, and behave in accordance with the truth in the community of nations.

The unconditional rule of the principles of international law and the application of the system of collective security on an equal basis to all States in accordance with the Charter of the United Nations are effective guarantees of international security. In view of the sovereign equality of States, it is the task of the United Nations to safeguard the security of all States without exception.

In that context, Peru shares the international concern about the protection and security of small States. Nevertheless, it recognizes that there is no clear definition of the concept of a small State or unanimity on the advisability of officially establishing within the United Nations the special status of small States. Nor is it possible, therefore, to determine at this stage which Member States could be given special protection and assistance by

the United Nations, on the basis of which claims would be made for protection and security which would differ in legal and political terms from those set forth in the Charter and recognized in the United Nations system.

The attempt to use agenda item 74 of the General Assembly in order to legitimize aggressive actions carried out in disregard of international treaties concerning borders cannot be tolerated because it will adversely affect the future consideration of the question of the protection and security of States in general.

In view of the truthfulness with which our Organization's agenda items must be considered, I must refer to the above-mentioned letters.

In the letter of 2 February 1995 (see A/49/844-S/1995/101, annex), the Under-Secretary for International Organizations of the Ministry of Foreign Affairs of Ecuador distorts a number of facts and takes the liberty of stating in conclusion that Peru is "an aggressor State, whose actions are endangering international peace and security".

As he is eminently aware, resolution 3314 (XXIX), adopted by the General Assembly in 1974, defines aggression as "the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any manner inconsistent with the Charter of the United Nations" and stresses that "the invasion or attack by the armed forces of a State or the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof" qualify as an act of aggression.

This means that the expropriation of the territory of a State - however temporary - is a basic element for defining an act of aggression. In view of the foregoing and the fact that the actions occurred in the area of the headwaters of the Cenepa river, which is situated entirely on the eastern side of the Cordillera del Cóndor - that is, in Peruvian territory - the term aggressor State cannot be applied to my country.

Furthermore, the second letter (A/49/855-S/1995/154), addressed to you from the Permanent Representative of Ecuador and dated 23 February 1995, goes so far as to accuse my country, again without furnishing any proof, of having used "chemical and other weapons which are banned because of their indiscriminate and inhumane effects".

In this connection, in addition to strongly denying that falsehood, I wish to recall that Peru has, for decades now and in a particularly active manner, expressed its rejection of chemical and other weapons of mass destruction (nuclear and bacteriological weapons). Thus, my country is a contracting party to the 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare and was one of the 37 countries that negotiated at the Geneva Conference on Disarmament the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, adopted in 1992.

In December 1991, taking into account the limitations of the 1925 Protocol and the period of time necessary for the Convention being negotiated in Geneva to enter into force, the President of Peru, Alberto Fujimori, proposed to the Heads of State of the Andean countries the Cartagena Declaration on the Renunciation of Weapons of Mass Destruction, which explicitly prohibits the possession, production, development, use, testing and transfer of chemical and other weapons of mass destruction, which was unanimously adopted. More recently, as a sign of the interest in the Convention referred to, my country organized, in September 1994, a regional seminar for delegates from Latin America and the Caribbean for the purpose of promoting its speedy ratification and satisfactory implementation in our region. I have mentioned the foregoing merely to suggest that every assertion must be duly supported.

With regard to conventional weapons - such as those used in the area of the headwaters of the Cenepa river - it would not be inappropriate to bear in mind the fact that Ecuador has failed to comply with the obligation to submit its reports to the United Nations Registry of Conventional Arms and the United Nations System for the Standardized Reporting of Military Expenditures, which is an easily verifiable indicator showing which of the two parties is making preparations in order to breach the peace.

Unfortunately, the inaccuracies contained in the letters referred to earlier are not the only ones with which the Ecuadorian Government has been misinforming public opinion. The international community also was surprised by the accusation made by the Ecuadorian Government on 28 January 1995 to the effect that Peruvian forces had utilized in the area of conflict helicopters provided by the Government of the United States of America for use in the fight against drug trafficking, an accusation which was speedily denied by the United States Government, which stated "the information disseminated in official communication No. 9 issued by the National State Secretariat of Communication, Office of the President of the Republic of Ecuador, is totally false", forcing the Ecuadorian Government to retract the accusation subsequently.

More recently, on 9 March 1995, the General Director of Maritime, Air and Space Sovereignty of the Ecuadorian Ministry of Foreign Affairs and an official acting in a liaison capacity between his Government and the Observer Mission, informed the EFE News Agency that Peru had imposed "a sort of obstacle, using delaying tactics in order to prevent the speedy arrival of the observers" in drawing up the document on the procedures for implementing the cease-fire agreed upon in the Itamaraty Peace Declaration, an inaccuracy which was corrected when the document on procedures was signed on 10 March 1995 by the Secretary-General of the Ministry of Foreign Affairs of Brazil in his capacity as Coordinator of the Group of Guarantors of the Rio de Janeiro Protocol, who stated that Peru had demonstrated its readiness to sign the document on Wednesday, 8 March.

Lastly, I should like to request you to have this letter and its annex, which contains a brief chronology of the unfortunate events that occurred in Peruvian territory, distributed as a document of the General Assembly, under agenda item 74, and of the Security Council.

(Signed) Fernando GUILLEN
Permanent Representative

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Background

Tension caused by Ecuador (1995)

1. The Peruvian-Ecuadorian Protocol of Peace, Friendship and Boundaries, signed on 29 January 1942 in Rio de Janeiro, with the assistance of Argentina, Brazil, Chile and the United States of America in their capacity as guarantor countries, definitively established the boundaries between the two countries. The Protocol was freely adopted by the Congresses of Peru and Ecuador, and the official exchange of the instruments of ratification took place in Petropolis, Brazil, on 31 March 1942, as a result of which the aforementioned international instrument is fully binding on the parties.

2. In implementation of the Protocol, between 1942 and 1950, the Combined Peruvian-Ecuadorian Border Demarcation Commission placed boundary markers along some 1,600 kilometres - about 95 per cent - of the boundary.

3. The disagreements concerning the eastern segment of the boundary that arose in the course of demarcation were resolved in 1945 by the verdict of the Brazilian Sea and War Captain Braz Dias Aguiar, who in 1944 had been appointed as arbitrator by the two countries; that is, the two countries had agreed in advance that his verdict would be binding on both parties. Thus, once issued, the verdict of the arbitrator was accepted by Peru and Ecuador in separate telegrams sent by the parties to the Minister for Foreign Affairs of Brazil, in which they stated that the ruling "puts an end to the disagreements" between the parties. In 1947, an aerial survey carried out by the United States Air Force at the request of the two countries helped establish the line which, in keeping with the arbitral verdict should follow the border in the Cordillera del Cóndor, between the source of the Quebrada de San Francisco and the confluence of the Yaupi and Santiago rivers, referred to in article 8 of the Rio de Janeiro Protocol.

4. Thus, towards the end of 1950, Peru and Ecuador had complied with the 1942 Protocol by placing boundary markers along the frontier line, which was carried out by the Combined Border Demarcation Commission. Nevertheless, in 1951, Ecuador withdrew from the Combined Commission, claiming that the extension of the Cenepa river - between the Zamora and Santiago rivers - made it impossible to implement the Rio de Janeiro Protocol in accordance with the verdict of Dias de Aguiar.

In 1960, once again changing its position with regard to the Rio de Janeiro Protocol, Ecuador unilaterally declared the Protocol to be null and void. Ecuador's position was immediately rejected by the guarantor countries, which demanded that Ecuador comply with the Protocol.

5. The area where the recent incidents have taken place is situated between the "20 November" boundary marker to the north and the left edge of the headwaters of the Cenepa river, in an unmarked segment of the Cordillera del Cóndor. This area, in accordance with the boundary established by the Dias de Aguiar verdict and the watershed identified in the 1947 United States aerial survey, belongs to Peru.

6. In spite of the fact that demarcation has not been completed in a small part of the Cordillera del Cóndor segment, Peru and Ecuador have exercised jurisdiction over their respective territorial possessions and have accepted de facto the Cordillera as the boundary between the two countries. Proof of this state of affairs is reflected by the fact that the Peruvian observation posts have always been situated on the eastern slopes of the Cordillera, while the Ecuadorian posts are situated on the western slopes. This situation was also recognized internationally by the Organization of American States, when it was proven that Ecuador had illegally occupied the "Falso Paquisha" post in the eastern sector of the Cordillera del Cóndor, that is, in Peruvian territory.

7. On 9 and 11 January 1995, Peruvian army patrols responded to shots fired by an Ecuadorian patrol in the locality called "Cueva de los Tayos" by Ecuador, situated in the immediate area of the Cenepa river, that is, on the eastern slopes of the Cordillera del Cóndor and therefore in Peruvian territory in accordance with the Rio de Janeiro Protocol and the verdict of Dias de Aguiar.

8. In response to the position taken by Ecuador, Peru reacted not only by denouncing the incident but also by creating an atmosphere of calm conducive to diplomacy through direct dialogue between the two Governments (Official Communiqué No. 001-95 of 13 January 1995).

9. The Government of Ecuador, in an explicit recognition of the Rio de Janeiro Protocol, unprecedented since 1960, had recourse to the mechanisms provided for in the Protocol and summoned the ambassadors of the guarantor countries in order to request the cooperation of their Governments with a view to solving the problem.

10. Peru, encouraged by Ecuador's positive attitude, welcomed the decision and reiterated its willingness to complete the demarcation process in conformity with the Rio de Janeiro Protocol in order to put an end once and for all to the tensions that periodically disrupt harmonious relations between the two countries (Official Communiqué No. 002/95 of 26 January 1995).

11. Unexpectedly, and right in the middle of the process of diplomatic consultations, two hours after the aforementioned Peruvian statement, an Ecuadorian helicopter shelled a Peruvian observation post situated approximately 4 kilometres from the border, in Peruvian territory.

12. In the face of this aggression, and in defence of our territorial integrity, the armed forces began military operations to prevent the infiltration of Ecuadorian patrols in the eastern slopes of the Cordillera del Cóndor. On explicit instructions from the National Defence Council, such operations have been carried out solely and exclusively in Peruvian territory.

13. "Tiwintza", "Base Sur" and "Cueva de los Tayos" are names that Ecuador has given to the observation posts that it set up surreptitiously at the headwaters of the Cenepa river in Peruvian territory. This stratagem should not surprise the international community since it is a repetition of the tactics used in 1981, when the Ecuadorian observation posts situated in the Ecuadorian localities of Machinaza, Mayaycu and Paquisha - on the western slopes of the Cordillera del Cóndor - were transferred to Peruvian territory, on the eastern

slopes of the Cordillera, retaining their original names and thereby making it possible for Ecuador to claim that Peru had attacked localities that belonged indisputably to Ecuador.

14. Peru, in legitimate defence of its territorial sovereignty, carried out the aforementioned military operations exclusively within Peruvian territory.

15. In accordance with the 1942 Rio de Janeiro Protocol and, in particular, the 1945 verdict of Braz Dias de Aguiar, Peru is prepared to settle the matter within the sole applicable legal framework, that is, in accordance with the mechanisms provided for in the 1942 Rio de Janeiro Protocol.

In keeping with the foregoing, Peru responded promptly to the invitation of the guarantor countries to meet in Brazil, at the highest diplomatic level and in the legal context of the Rio de Janeiro Protocol, and it took part in the negotiations in order to put an end to confrontations and restore peace.

16. As a consequence of these negotiations, on 17 February 1995, the Itamaraty Peace Declaration between Ecuador and Peru and the Declaration of the Guarantor Countries of the 1942 Rio de Janeiro Protocol were signed in Brazil; the two declarations may be summed up by three basic points:

The first point relates to the cease-fire decision declared unilaterally by Peru as of 1200 hours Lima and Quito time on 14 February 1995 (Official Communiqué No. 006/95) and subsequently accepted by Ecuador.

The second deals with the elaboration of a set of measures to consolidate the cease-fire. These measures include the immediate and simultaneous separation of forces in the area of confrontation, which will be achieved by concentrating the troops of each country at their respective posts: those of Ecuador at Coangos and those of Peru at observation post No. 1. This measure will be supplemented by the separation of forces in areas not directly affected by the confrontation, through a gradual and reciprocal demobilization of troops. In order to ensure the strict implementation of these measures, Peru and Ecuador agreed to the deployment of a mission of military observers from the guarantor countries which, moreover, should recommend an area to be completely demilitarized and whose decision will take due account of the guarantees necessary for the security of neighbouring areas in the two countries.

The third point concerns the agreement of Peru and Ecuador to begin talks with a view to solving outstanding disagreements between the two countries, which are none other than those relating to the demarcation that is still to be carried out in the area, thus avoiding, as explicitly stated in the preamble of the Itamaraty Peace Declaration, "new confrontations that may affect the relations of peace, friendship and good-neighbourliness". It is important to point out that the Declaration of the Guarantor Countries, while taking note of the renewed commitment of Argentina, Brazil, Chile and the United States of America, to fulfil all the responsibilities that they assumed in 1942, emphasizes the decision of Peru and Ecuador to begin bilateral talks with a view to reaching a lasting solution.

17. Nevertheless, the cease-fire was violated by Ecuador, denounced by Peru and confirmed by the advance group of the mission of observers sent by the guarantor countries on 23 and 24 February 1995.

18. In order to avoid the impasse created by the cease-fire violation, the President of Chile proposed that the Peruvian and Ecuadorian Ministers for Foreign Affairs should meet with their counterparts from the four guarantor countries in Montevideo, on the occasion of the change of Government in Uruguay. That proposal was supported by the other guarantor countries and accepted by Peru and Ecuador.

19. The aforementioned Ministers for Foreign Affairs, meeting in Montevideo on 28 February 1995, issued a declaration in which Peru and Ecuador pledged to strengthen peace through full compliance with the Itamaraty Peace Declaration, and the guarantor countries agreed to ensure the immediate presence of their observers in the area in order to monitor the cease-fire and the concentration of Ecuadorian troops in Coangos and Peruvian troops at observation post No. 1. Moreover, the guarantor countries reiterate their commitment to continue to fulfil their obligations under the Rio de Janeiro Protocol.

20. In strict compliance with the foregoing, the Definition of Procedures of the mission of observers from the guarantor countries was signed on 10 March 1995; the observers arrived at their destinations in Peru and Ecuador on 11 March 1995.

New York, 13 March 1995